

108TH CONGRESS  
1ST SESSION

# S. 1721

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 14, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Indian Pro-  
5       bate Reform Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the Act of February 8, 1887 (commonly  
9       known as the “Indian General Allotment Act”) (25  
10       U.S.C. 331 et seq.), which authorized the allotment

1 of Indian reservations, did not permit Indian allot-  
2 ment owners to provide for the testamentary disposi-  
3 tion of the land that was allotted to them;

4 (2) that Act provided that allotments would de-  
5 scend according to State law of intestate succession  
6 based on the location of the allotment;

7 (3) the reliance of the Federal Government on  
8 the State law of intestate succession with respect to  
9 the descent of allotments has resulted in numerous  
10 problems affecting Indian tribes, members of Indian  
11 tribes, and the Federal Government, including

12 (A) the increasingly fractionated ownership  
13 of trust and restricted land as that land is in-  
14 herited by successive generations of owners as  
15 tenants in common;

16 (B) the application of different rules of in-  
17 testate succession to each interest of a decedent  
18 in or to trust or restricted land if that land is  
19 located within the boundaries of more than 1  
20 State, which application—

21 (i) makes probate planning unneces-  
22 sarily difficult; and

23 (ii) impedes efforts to provide probate  
24 planning assistance or advice;

1 (C) the absence of a uniform general pro-  
 2 bate code for trust and restricted land, which  
 3 makes it difficult for Indian tribes to work co-  
 4 operatively to develop tribal probate codes; and

5 (D) the failure of Federal law to address  
 6 or provide for many of the essential elements of  
 7 general probate law, either directly or by ref-  
 8 erence, which—

9 (i) is unfair to the owners of trust and  
 10 restricted land (and heirs and devisees of  
 11 owners); and

12 (ii) makes probate planning more dif-  
 13 ficult; and

14 (4) a uniform Federal probate code would like-  
 15 ly—

16 (A) reduce the number of fractionated in-  
 17 terests in trust or restricted land;

18 (B) facilitate efforts to provide probate  
 19 planning assistance and advice;

20 (C) facilitate intertribal efforts to produce  
 21 tribal probate codes in accordance with section  
 22 206 of the Indian Land Consolidation Act (25  
 23 U.S.C. 2205); and

24 (D) provide essential elements of general  
 25 probate law that are not applicable on the date

1 of enactment of this Act to interests in trust or  
 2 restricted land.

3 **SEC. 3. INDIAN PROBATE REFORM.**

4 (a) TESTAMENTARY DISPOSITION.—Section 207 of  
 5 the Indian Land Consolidation Act (25 U.S.C. 2206) is  
 6 amended by striking subsection (a) and inserting the fol-  
 7 lowing:

8 “(a) TESTAMENTARY DISPOSITION.—

9 “(1) GENERAL DEVISE OF AN INTEREST IN  
 10 TRUST OR RESTRICTED LAND.—

11 “(A) IN GENERAL.—Subject to any appli-  
 12 cable Federal law relating to the devise or de-  
 13 scent of trust or restricted land, or a tribal pro-  
 14 bate code approved by the Secretary in accord-  
 15 ance with section 206, the owner of an interest  
 16 in trust or restricted land may devise such an  
 17 interest to—

18 “(i) an Indian tribe with jurisdiction  
 19 over the land; or

20 “(ii) any Indian; or

21 “(iii) any lineal descendant of the tes-  
 22 tator; or

23 “(iv) any person who owns a pre-  
 24 existing undivided trust or restricted inter-  
 25 est in the same parcel of land;

1 in trust or restricted status.

2 “(B) RULE OF INTERPRETATION.—Any  
3 devise of an interest in trust or restricted land  
4 or personal property to a devisee listed in sub-  
5 paragraph (A) shall be considered to be a devise  
6 of the interest in trust or restricted status, un-  
7 less—

8 “(i) language in the will clearly evi-  
9 dences the testator’s intent that the inter-  
10 est is to vest in the devisee as a fee inter-  
11 est without restrictions; or

12 “(ii) the interest devised is a life es-  
13 tate.

14 “(2) DEVISE OF TRUST OR RESTRICTED LAND  
15 AS A LIFE ESTATE OR IN FEE.—

16 “(A) IN GENERAL.—Except as provided  
17 under any applicable Federal law, any interest  
18 in trust or restricted land that is not devised in  
19 accordance with paragraph (1) may be devised  
20 only—

21 “(i) as a life estate without regard to  
22 waste to any person, with the remainder  
23 being devised only in accordance with sub-  
24 paragraph (B) or paragraph (1); or

1 “(ii) except as provided in subpara-  
 2 graph (B), in fee to any person.

3 “(B) LIMITATION.—Any interest in trust  
 4 or restricted land that is subject to section 4 of  
 5 the Act of June 18, 1934 (25 U.S.C. 464), may  
 6 be devised only in accordance with—

7 “(i) that section;

8 “(ii) subparagraph (A)(i); or

9 “(iii) paragraph (1).

10 “(3) GENERAL DEVISE OF AN INTEREST IN  
 11 TRUST OR RESTRICTED PERSONAL PROPERTY.—

12 “(A) TRUST OR RESTRICTED PERSONAL  
 13 PROPERTY DEFINED.—The term ‘Trust or re-  
 14 stricted personal property’ as used in this sec-  
 15 tion includes—

16 “(i) all funds and securities of any  
 17 kind which are held in trust in an indi-  
 18 vidual Indian money account or otherwise  
 19 supervised for the decedent by the Sec-  
 20 retary; and

21 “(ii) absent clear evidence to the con-  
 22 trary, all personal property permanently  
 23 affixed to trust or restricted lands.

24 “(B) IN GENERAL.—Subject to any appli-  
 25 cable Federal law relating to the devise or de-

1           scent of such trust or restricted personal prop-  
 2           erty, or a tribal probate code approved by the  
 3           Secretary in accordance with section 206, the  
 4           owner of an interest in trust or restricted per-  
 5           sonal property may devise such an interest to  
 6           any person or entity.

7           “(C) MAINTENANCE AS TRUST OR RE-  
 8           STRICTED PERSONAL PROPERTY.—Except as  
 9           provided in paragraph (1)(B), where an interest  
 10          in trust or restricted personal property is de-  
 11          vised to a devisee listed in paragraph (1)(A),  
 12          the Secretary shall maintain and continue to  
 13          manage such interests as trust or restricted  
 14          personal property.

15          “(D) DIRECT DISBURSEMENT AND DIS-  
 16          TRIBUTION.—In the case of a devise of an in-  
 17          terest in trust or restricted personal property to  
 18          a devisee not listed in paragraph (1)(A), the  
 19          Secretary shall directly disburse and distribute  
 20          such personal property to the devisee.

21          “(4) INELIGIBLE DEVISEES OF TRUST OR RE-  
 22          STRICTED INTEREST; INVALID WILLS.—Any interest  
 23          in trust or restricted land or personal property that  
 24          is devised as a trust or restricted interest to a devi-  
 25          see not listed in subparagraph (A) of paragraph (1)

1       shall descend to the devisee as a fee interest. Any in-  
 2       terest in trust or restricted land or personal property  
 3       that is not disposed of by a valid will shall descend  
 4       in accordance with the applicable law of intestate  
 5       succession as provided for in subsection (b).”.

6       (b) NONTESTAMENTARY DISPOSITION.—Section 207  
 7       of the Indian Land Consolidation Act (25 U.S.C. 2206)  
 8       is amended by striking subsection (b) and inserting the  
 9       following:

10       “(b) NONTESTAMENTARY DISPOSITION.—

11               “(1) RULES OF DESCENT.—Subject to any ap-  
 12       plicable Federal law relating to the devise or descent  
 13       of trust or restricted property, any interest in trust  
 14       or restricted property, including personal property,  
 15       that is not disposed of by a valid will—

16               “(A) shall descend according to a tribal  
 17       probate code that is approved in accordance  
 18       with section 206; or

19               “(B) in the case of an interest in trust or  
 20       restricted property to which such a code does  
 21       not apply, shall descend in accordance with—

22               “(i) paragraphs (2) through (4); and

23               “(ii) other applicable Federal law.

24       “(2) RULES GOVERNING DESCENT OF ES-  
 25       TATE.—



“(A) SURVIVING SPOUSE.—If there is a surviving spouse of the decedent, such spouse shall receive trust and restricted property in the estate as follows:

“(i) If the decedent is survived by an heir described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive  $\frac{1}{3}$  of the trust or restricted personal property of the decedent and a life estate without regard to waste in the interests in trust or restricted lands of the decedent.

“(ii) If there are no heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive all of the trust or restricted personal property of the decedent and a life estate without regard to waste in the trust or restricted lands.

“(iii) The remainder shall pass as set forth in subparagraph (B).

“(B) INDIAN HEIRS.—Where there is no surviving spouse of the decedent, or there is a remainder pursuant to subparagraph (A), the estate or remainder of the decedent shall, subject to subparagraph (A), pass as follows:

1           “(i) To the Indian children of the de-  
2           cedent (or if 1 or more of those Indian  
3           children do not survive the decedent, the  
4           Indian children of the deceased child of the  
5           decedent, by right of representation, if  
6           such Indian children of the child survive  
7           the decedent) in equal shares.

8           “(ii) If the property does not pass  
9           under clause (i), to the surviving Indian  
10          great-grandchildren of the decedent in  
11          equal shares.

12          “(iii) If the property does not pass  
13          under clause (i) or (ii), to the surviving In-  
14          dian brothers and sisters who are full sib-  
15          lings of the decedent or who are half-sib-  
16          lings by blood and not by marriage, in  
17          equal shares.

18          “(iv) If the property does not pass  
19          under clause (i), (ii), or (iii), to the Indian  
20          parent or parents of the decedent in equal  
21          shares.

22          “(v) If the property does not pass  
23          under clause (i), (ii), (iii), or (iv), to the  
24          Indian tribe with jurisdiction over the in-  
25          terests in trust or restricted lands;

1           except that notwithstanding clause (v), an In-  
 2           dian co-owner (including the Indian tribe re-  
 3           ferred to in clause (v)) of a parcel of trust or  
 4           restricted land may acquire an interest that  
 5           would otherwise descend under that clause by  
 6           paying into the estate of the decedent, before  
 7           the close of the probate of the estate, the fair  
 8           market value of the interest in the land; if more  
 9           than 1 Indian co-owner offers to pay for such  
 10          interest, the highest bidder shall acquire the in-  
 11          terest.

12                 “(C) NO INDIAN TRIBE.—If there is no In-  
 13          dian tribe with jurisdiction over the interests in  
 14          trust or restricted lands that would otherwise  
 15          descend under subparagraph (B)(v), then such  
 16          interests shall be divided equally among co-own-  
 17          ers of trust or restricted interests in the parcel;  
 18          if there are no such co-owners, then the Sec-  
 19          retary shall accumulate and hold such interests  
 20          in trust or restricted status for the Indian tribe  
 21          or tribes from which the decedent descended.

22                 “(3) RIGHT OF REPRESENTATION.—

23                         “(A) IN GENERAL.—Subject to subpara-  
 24          graph (B)—

1                   “(i) the interests passing to children  
 2                   and grandchildren of a decedent under  
 3                   paragraph (2) shall be divided into as  
 4                   many equal shares as there are surviving  
 5                   children of the decedent, deceased children  
 6                   who have died before the decedent without  
 7                   issue, and deceased children who have died  
 8                   before the decedent and have left grand-  
 9                   children who survive the decedent; and

10                   “(ii) 1 share shall pass to each sur-  
 11                   viving child of the decedent and 1 share  
 12                   shall pass equally divided among the sur-  
 13                   viving children of a deceased child.

14                   “(B) EXCEPTION FOR HEIRS OF EQUAL  
 15                   CONSANGUINITY.—Notwithstanding subpara-  
 16                   graph (A), when the persons entitled to take  
 17                   under subparagraph (B)(i) of paragraph (2) are  
 18                   all in the same degree of consanguinity to the  
 19                   decedent, they shall take in equal shares.

20                   “(4) SPECIAL RULE RELATING TO SURVIVAL.—  
 21                   In the case of intestate succession under this sub-  
 22                   section, if an individual fails to survive the decedent  
 23                   by at least 120 hours, as established by clear and  
 24                   convincing evidence—

1           “(A) the individual shall be deemed to have  
 2           predeceased the decedent for the purpose of in-  
 3           testate succession; and

4           “(B) the heirs of the decedent shall be de-  
 5           termined in accordance with this section.

6           “(5) STATUS OF INHERITED INTERESTS.—A  
 7           trust or restricted interest in land or personal prop-  
 8           erty that descends under the provisions of this sub-  
 9           section (not including any interest in land or per-  
 10          sonal property passing to a surviving spouse under  
 11          paragraph (2)(A)) shall continue to have the same  
 12          trust or restricted status in the hands of the heir as  
 13          such interest had immediately prior to the dece-  
 14          dent’s death.”.

15          (c) Section 207(c) of the Indian Land Consolidation  
 16          Act (25 U.S.C. 2206 (c)) is amended by striking all that  
 17          follows the heading, “JOINT TENANCY; RIGHT OF SURVI-  
 18          VORSHIP”, and inserting the following: “If a testator de-  
 19          vises interests in the same parcel of trust or restricted  
 20          lands to more than 1 person, in the absence of express  
 21          language in the devise to the contrary, the devise shall  
 22          be presumed to create joint tenancy with the right of sur-  
 23          vivorship in the interests involved.”.

1 (d) RULE OF CONSTRUCTION.—Section 207 of the  
 2 Indian Land Consolidation Act (25 U.S.C. 2206) is  
 3 amended by adding at the end the following:

4 “(h) APPLICABLE FEDERAL LAW.—

5 “(1) IN GENERAL.—Any references in sub-  
 6 sections (a) and (b) to applicable Federal law in-  
 7 clude—

8 “(A) Public Law 91–627 (84 Stat. 1874);

9 “(B) Public Law 92–377 (86 Stat. 530);

10 “(C) Public Law 92–443 (86 Stat. 744);

11 “(D) Public Law 96–274 (94 Stat. 537);

12 and

13 “(E) Public Law 98–513 (98 Stat. 2411).

14 “(2) NO EFFECT ON LAWS.—Nothing in this  
 15 section amends or otherwise affects the application  
 16 of any law described in paragraph (1), or any other  
 17 Federal law that provides for the devise and descent  
 18 of any trust or restricted land located on a specific  
 19 Indian reservation or for the devise and descent of  
 20 the allotted lands of a specific tribe or specific  
 21 tribes.

22 “(i) RULES OF INTERPRETATION.—In the absence of  
 23 a contrary intent, and except as otherwise provided under  
 24 this Act or a tribal probate code approved by the Secretary  
 25 pursuant to section 206, wills shall be construed as to

1 trust and restricted land and personal property in accord-  
 2 ance with the following rules:

3 “(1) CONSTRUCTION THAT WILL PASSES ALL  
 4 PROPERTY.—A will shall be construed to apply to all  
 5 trust and restricted land and personal property  
 6 which the testator owned at his death, including any  
 7 such land or property acquired after the execution of  
 8 his will.

9 “(2) CLASS GIFTS.—

10 “(A) Terms of relationship that do not dif-  
 11 ferentiate relationships by blood from those by  
 12 affinity, such as ‘uncles’, ‘aunts’, ‘nieces’ or  
 13 ‘nephews’, are construed to exclude relatives by  
 14 affinity. Terms of relationship that do not dif-  
 15 ferentiate relationships by the half blood from  
 16 those by the whole blood, such as ‘brothers’,  
 17 ‘sisters’, ‘nieces’, or ‘nephews’, are construed to  
 18 include both types of relationships.

19 “(B) MEANING OF ‘HEIRS’ AND ‘NEXT OF  
 20 KIN,’ ETC; TIME OF ASCERTAINING CLASS.—A  
 21 devise of trust or restricted land or trust funds  
 22 to the testator’s or another designated person’s  
 23 ‘heirs’, ‘next of kin’, ‘relatives’, or ‘family’ shall  
 24 mean those persons, including the spouse, who  
 25 would be entitled to take under the provisions

1 of this Act for nontestamentary disposition. The  
 2 class is to be ascertained as of the date of the  
 3 testator's death.

4 “(C) TIME FOR ASCERTAINING CLASS.—In  
 5 construing a devise to a class other than a class  
 6 described in subparagraph (B), the class shall  
 7 be ascertained as of the time the devise is to  
 8 take effect in enjoyment. The surviving issue of  
 9 any member of the class who is then dead shall  
 10 take by right of representation the share which  
 11 their deceased ancestor would have taken.

12 “(3) MEANING OF ‘DIE WITHOUT ISSUE’ AND  
 13 SIMILAR PHRASES.—In any devise under this chap-  
 14 ter, the words ‘die without issue’, ‘die without leav-  
 15 ing issue’, ‘have no issue’, or words of a similar im-  
 16 port shall be construed to mean that an individual  
 17 had no lineal descendants in his lifetime or at his  
 18 death, and not that there will be no lineal descend-  
 19 ants at some future time.

20 “(4) PERSONS BORN OUT OF WEDLOCK.—In  
 21 construing provisions of this chapter relating to  
 22 lapsed and void devises, and in construing a devise  
 23 to a person or persons described by relationship to  
 24 the testator or to another, a person born out of wed-



1       lock shall be considered the child of the natural  
2       mother and also of the natural father.

3               “(5) LAPSED AND VOID DEVISES AND LEG-  
4       ACIES; SHARES NOT IN RESIDUE.—Where a devise of  
5       property that is not part of the residuary estate fails  
6       or becomes void because—

7               “(A) the beneficiary has predeceased the  
8       testator;

9               “(B) the devise has been revoked by the  
10       testator; or

11              “(C) the devise has been disclaimed by the  
12       beneficiary;

13       the property shall, if not otherwise expressly pro-  
14       vided for under this Act or a tribal probate code,  
15       pass under the residuary clause, if any, contained in  
16       the will.

17              “(6) LAPSED AND VOID DEVISES AND LEG-  
18       ACIES; SHARES IN RESIDUE.—When a devise as de-  
19       scribed in paragraph (7) shall be included in a resid-  
20       uary clause of the will and shall not be available to  
21       the issue of the devisee, and if the disposition shall  
22       not be otherwise expressly provided for by a tribal  
23       probate code, it shall pass to the other residuary  
24       devisees, if any, in proportion to their respective  
25       shares or interests in the residue.

1           “(7) FAMILY CEMETERY PLOT.—If a family  
2 cemetery plot owned by the testator at his decease  
3 is not mentioned in the decedent’s will, the owner-  
4 ship of the plot shall descend to his heirs as if he  
5 had died intestate.

6           “(8) AFTER-BORN HEIRS.—A child in gestation  
7 at the time of decedent’s death will be treated as  
8 having survived the decedent if the child lives at  
9 least 120 hours after its birth.

10           “(9) ADVANCEMENTS OF TRUST OR RE-  
11 STRICTED PERSONAL PROPERTY DURING LIFETIME;  
12 EFFECT ON DISTRIBUTION OF ESTATE.—

13           “(A) The trust or restricted personal prop-  
14 erty of a decedent who dies intestate as to all  
15 or a portion of his or her estate, given during  
16 the decedent’s lifetime to an heir of the dece-  
17 dent, shall be treated as an advancement  
18 against the heir’s inheritance, but only if the  
19 decedent declared in a contemporaneous writ-  
20 ing, or the heir acknowledged in writing, that  
21 the gift is an advancement or is to be taken  
22 into account in computing the division and dis-  
23 tribution of the decedent’s intestate estate.

24           “(B) For the purposes of this section,  
25 trust or restricted personal property advanced

1 during the decedent's lifetime is valued as of  
 2 the time the heir came into possession or enjoy-  
 3 ment of the property or as of the time of the  
 4 decedent's death, whichever occurs first.

5 “(C) If the recipient of the property  
 6 predeceases the decedent, the property is not  
 7 treated as an advancement or taken into ac-  
 8 count in computing the division and distribution  
 9 of the decedent's intestate estate unless the de-  
 10 cedent's contemporaneous writing provides oth-  
 11 erwise.

12 “(10) HEIRS RELATED TO DECEDENT  
 13 THROUGH 2 LINES; SINGLE SHARE.—A person who  
 14 is related to the decedent through 2 lines of relation-  
 15 ship is entitled to only a single share based on the  
 16 relationship that would entitle the person to the  
 17 larger share.

18 “(j) HEIRSHIP BY KILLING.—

19 “(1) ‘HEIR BY KILLING’ DEFINED.—As used in  
 20 this subsection, ‘heir by killing’ means any person  
 21 who participates, either as a principal or as an ac-  
 22 cessory before the fact, in the willful and unlawful  
 23 killing of the decedent.

24 “(2) NO ACQUISITION OF PROPERTY BY KILL-  
 25 ING.—Subject to any applicable Federal law relating

1 to the devise or descent of trust or restricted prop-  
 2 erty, no heir by killing shall in any way acquire any  
 3 interests in trust or restricted property as the result  
 4 of the death of the decedent, but such property shall  
 5 pass in accordance with this subsection.

6 “(3) DESCENT, DISTRIBUTION, AND RIGHT OF  
 7 SURVIVORSHIP.—The heir by killing shall be deemed  
 8 to have predeceased the decedent as to decedent’s in-  
 9 terests in trust or restricted property which would  
 10 have passed from the decedent or his estate to the  
 11 heir by killing—

12 “(A) under intestate succession under this  
 13 chapter;

14 “(B) under a tribal probate code, unless  
 15 otherwise provided for;

16 “(C) as the surviving spouse;

17 “(D) by devise;

18 “(E) as a reversion or a vested remainder;

19 “(F) as a survivorship interest; and

20 “(G) as a contingent remainder or execu-  
 21 tory or other future interest.

22 “(4) JOINT TENANTS, JOINT OWNERS, AND  
 23 JOINT OBLIGEES.—

24 “(A) Any trust or restricted land or per-  
 25 sonal property held by only the heir by killing

1           and the decedent as joint tenants, joint owners,  
2           or joint obligees shall pass upon the death of  
3           the decedent to his or her estate, as if the heir  
4           by killing had predeceased the decedent.

5           “(B) As to trust or restricted property  
6           held jointly by 3 or more persons, including  
7           both the heir by killing and the decedent, any  
8           income which would have accrued to the heir by  
9           killing as a result of the death of the decedent  
10          shall pass to the estate of the decedent as if the  
11          heir by killing had predeceased the decedent  
12          and any surviving joint tenants.

13          “(C) Notwithstanding any other provision  
14          of this subsection, the decedent’s interest in  
15          trust or restricted property that is held in a  
16          joint tenancy with the right of survivorship  
17          shall be severed from the joint tenancy as  
18          though the property held in the joint tenancy  
19          were to be severed and distributed equally  
20          among the joint tenants and the decedent’s in-  
21          terest shall pass to his estate; the remainder of  
22          the interests shall remain in joint tenancy with  
23          right of survivorship among the surviving joint  
24          tenants.

1           “(5) LIFE ESTATE FOR THE LIFE OF AN-  
 2           OTHER.—If the estate is held by a third person  
 3           whose possession expires upon the death of the dece-  
 4           dent, it shall remain in such person’s hands for the  
 5           period of the life expectancy of the decedent.

6           “(6) PREADJUDICATION RULE.—

7           “(A) IN GENERAL.—If a person has been  
 8           charged, whether by indictment, information, or  
 9           otherwise by the United States, a tribe, or any  
 10          State, with voluntary manslaughter or homicide  
 11          in connection with a decedent’s death, then any  
 12          and all trust or restricted land or personal  
 13          property that would otherwise pass to that per-  
 14          son from the decedent’s estate shall not pass or  
 15          be distributed by the Secretary until the  
 16          charges have been resolved in accordance with  
 17          the provisions of this paragraph.

18          “(B) DISMISSAL OR WITHDRAWAL.—Upon  
 19          dismissal or withdrawal of the charge, or upon  
 20          a verdict of not guilty, such land and funds  
 21          shall pass as if no charge had been filed or  
 22          made.

23          “(C) CONVICTION.—Upon conviction of  
 24          such person, the trust and restricted land and

1           personal property in the estate shall pass in ac-  
2           cordance with this subsection.

3           “(7) BROAD CONSTRUCTION; POLICY OF SUB-  
4           SECTION.—This subsection shall not be considered  
5           penal in nature, but shall be construed broadly in  
6           order to effect the policy that no person shall be al-  
7           lowed to profit by his own wrong, wherever com-  
8           mitted.

9           “(k) GENERAL RULES GOVERNING PROBATE.—

10           “(1) SCOPE.—The provisions of this subsection  
11           shall apply only to estates that are subject to pro-  
12           bate under the provisions of subsections (a) and (b).

13           “(2) PRETERMITTED SPOUSES AND CHIL-  
14           DREN.—

15           “(A) SPOUSES.—

16           “(i) IN GENERAL.—Except as pro-  
17           vided in clause (ii), if the surviving spouse  
18           of a testator married the testator after the  
19           testator executed the will of the testator,  
20           the surviving spouse shall receive the intes-  
21           tate share in trust or restricted land that  
22           the spouse would have received if the tes-  
23           tator had died intestate.

1                   “(ii) EXCEPTION.—Clause (i) shall  
 2 not apply to an interest in trust or re-  
 3 stricted land where—

4                   “(I) the will of a testator is exe-  
 5 cuted before the date of enactment of  
 6 this subparagraph;

7                   “(II)(aa) the spouse of a testator  
 8 is a non-Indian; and

9                   “(bb) the testator devised the in-  
 10 terests in trust or restricted land of  
 11 the testator to 1 or more Indians;

12                   “(III) it appears, based on an ex-  
 13 amination of the will or other evi-  
 14 dence, that the will was made in con-  
 15 templation of the marriage of the tes-  
 16 tator to the surviving spouse;

17                   “(IV) the will expresses the in-  
 18 tention that the will is to be effective  
 19 notwithstanding any subsequent mar-  
 20 riage; or

21                   “(V)(aa) the testator provided for  
 22 the spouse by a transfer of funds or  
 23 property outside the will; and

24                   “(bb) an intent that the transfer  
 25 be in lieu of a testamentary provision



1 is demonstrated by statements of the  
2 testator or through a reasonable infer-  
3 ence based on the amount of the  
4 transfer or other evidence.

5 “(iii) SPOUSES MARRIED AT THE TIME  
6 OF THE WILL.—Should the surviving  
7 spouse of the testator be omitted from the  
8 will of the testator, the surviving spouse  
9 shall be treated, for purposes of trust or  
10 restricted land or personal property in the  
11 testator’s estate, as though there was no  
12 will under the provisions of section  
13 207(b)(2)(A) if—

14 “(I) the testator and surviving  
15 spouse were continuously married  
16 without legal separation for the 10-  
17 year period preceding the decedent’s  
18 death;

19 “(II) the testator and surviving  
20 spouse have a surviving child who is  
21 the child of the testator;

22 “(III) the surviving spouse has  
23 made substantial payments on or im-  
24 provements to the trust or restricted  
25 land in such estate; or

1                   “(IV) the surviving spouse is  
 2                   under a binding obligation to continue  
 3                   making loan payments for the trust or  
 4                   restricted land for a substantial period  
 5                   of time;

6                   except that if there is evidence that the  
 7                   testator adequately provided for the sur-  
 8                   viving spouse and any minor children by a  
 9                   transfer of funds or property outside of the  
 10                  will, this clause shall not apply.

11                  “(iv) DEFINED TERMS.—The terms  
 12                  ‘substantial payments or improvements’  
 13                  and ‘substantial period of time’ as used in  
 14                  subparagraph (A)(iii) (III) and (IV) shall  
 15                  have the meanings given to them in the  
 16                  regulations adopted by the Secretary under  
 17                  the provisions of this Act.

18                  “(B) CHILDREN.—

19                  “(i) IN GENERAL.—If a testator exe-  
 20                  cuted the will of the testator before the  
 21                  birth or adoption of 1 or more children of  
 22                  the testator, and the omission of the chil-  
 23                  dren from the will is a product of inadvert-  
 24                  ence rather than an intentional omission,  
 25                  the children shall share in the intestate in-

1           terests of the decedent in trust or re-  
 2           stricted land as if the decedent had died  
 3           intestate.

4           “(ii) ADOPTED HEIRS.—Any person  
 5           recognized as an heir by virtue of adoption  
 6           under the Act of July 8, 1940 (25 U.S.C.  
 7           372a), shall be treated as the child of a de-  
 8           cedent under this subsection.

9           “(iii) ADOPTED-OUT CHILDREN.—

10           “(I) IN GENERAL.—For purposes  
 11           of this Act, an adopted person shall  
 12           not be considered the child or issue of  
 13           his natural parents, except in distrib-  
 14           uting the estate of a natural kin,  
 15           other than the natural parent, who  
 16           has maintained a family relationship  
 17           with the adopted person. If a natural  
 18           parent shall have married the adopt-  
 19           ing parent, the adopted person for  
 20           purposes of inheritance by, from and  
 21           through him shall also be considered  
 22           the issue of such natural parent.

23           “(II) ELIGIBLE HEIR PURSUANT  
 24           TO OTHER FEDERAL LAW OR TRIBAL  
 25           LAW.—Notwithstanding the provisions

1 of subparagraph (B)(iii)(I), other  
 2 Federal laws and laws of the Indian  
 3 tribe with jurisdiction over the trust  
 4 or restricted land may otherwise de-  
 5 fine the inheritance rights of adopted-  
 6 out children.

7 “(3) DIVORCE.—

8 “(A) SURVIVING SPOUSE.—

9 “(i) IN GENERAL.—An individual who  
 10 is divorced from a decedent, or whose mar-  
 11 riage to the decedent has been annulled,  
 12 shall not be considered to be a surviving  
 13 spouse unless, by virtue of a subsequent  
 14 marriage, the individual is married to the  
 15 decedent at the time of death of the de-  
 16 cent.

17 “(ii) SEPARATION.—A decree of sepa-  
 18 ration that does not dissolve a marriage,  
 19 and terminate the status of husband and  
 20 wife, shall not be considered a divorce for  
 21 the purpose of this subsection.

22 “(iii) NO EFFECT ON ADJUDICA-  
 23 TIONS.—Nothing in clause (i) prevents an  
 24 entity responsible for adjudicating an in-  
 25 terest in trust or restricted land from giv-

ing effect to a property right settlement if  
 1 of the parties to the settlement dies be-  
 fore the issuance of a final decree dis-  
 solving the marriage of the parties to the  
 property settlement.

“(B) EFFECT OF SUBSEQUENT DIVORCE  
 ON A WILL OR DEVISE.—

“(i) IN GENERAL.—If, after executing  
 a will, a testator is divorced or the mar-  
 riage of the testator is annulled, as of the  
 effective date of the divorce or annulment,  
 any disposition of interests in trust or re-  
 stricted land made by the will to the  
 former spouse of the testator shall be con-  
 sidered to be revoked unless the will ex-  
 pressly provides otherwise.

“(ii) PROPERTY.—Property that is  
 prevented from passing to a former spouse  
 of a decedent under clause (i) shall pass as  
 if the former spouse failed to survive the  
 decedent.

“(iii) PROVISIONS OF WILLS.—Any  
 provision of a will that is considered to be  
 revoked solely by operation of this sub-  
 paragraph shall be revived by the remar-

1                   riage of a testator to the former spouse of  
2                   the testator.

3                   “(4) NOTICE.—

4                   “(A) IN GENERAL.—To the maximum ex-  
5                   tent practicable, the Secretary shall notify each  
6                   owner of trust and restricted land of the provi-  
7                   sions of this Act.

8                   “(B) COMBINED NOTICES.—The notice  
9                   under subparagraph (A) may, at the discretion  
10                  of the Secretary, be provided with the notice re-  
11                  quired under section 207(g).”.

12 **SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN**  
13 **LANDS.**

14                  Section 205 of the Indian Land Consolidation Act  
15                  (25 U.S.C. 2204) is amended by adding at the end the  
16                  following:

17                  “(c) PARTITION OF HIGHLY FRACTIONATED INDIAN  
18                  LANDS.—

19                  “(1) APPLICABILITY.—This subsection shall be  
20                  applicable only to parcels of land (including surface  
21                  and subsurface interests, except with respect to a  
22                  subsurface interest that has been severed from the  
23                  surface interest, in which case this subsection shall  
24                  apply only to the surface interest) which the Sec-  
25                  retary has determined, pursuant to paragraph

1       (2)(B), to be parcels of highly fractionated Indian  
2       land.

3           “(2) REQUIREMENTS.—Subject to section 223  
4       of this Act, but notwithstanding any other provision  
5       of law, the Secretary shall ensure that each partition  
6       action meets the following requirements:

7           “(A) REQUEST.—The Secretary shall com-  
8       mence a process for partitioning a parcel of  
9       land by sale in accordance with the provisions  
10      of this subsection upon receipt of an application  
11      by—

12           “(i) the Indian tribe with jurisdiction  
13      over the subject land that owns an undi-  
14      vided interest in the parcel of land; or

15           “(ii) any person owning an undivided  
16      trust or restricted interest in the parcel of  
17      land.

18           “(B) DETERMINATION.—Upon receipt of  
19      an application pursuant to subparagraph (A),  
20      the Secretary shall determine whether the sub-  
21      ject parcel meets the requirements set forth in  
22      section 202(6) (25 U.S.C. 2201(6)) to be classi-  
23      fied as a parcel of highly fractionated Indian  
24      land.

1           “(C) CONSENT REQUIREMENTS.—A parcel  
2 of land may be partitioned under this sub-  
3 section only with the written consent of—

4           “(i) the Indian tribe with jurisdiction  
5 over the subject land if such Indian tribe  
6 owns an undivided interest in the parcel;

7           “(ii) any owner who, for the 3-year  
8 period immediately preceding the date on  
9 which the Secretary receives the applica-  
10 tion, has—

11           “(I) continuously maintained a  
12 bona fide residence on the parcel; or

13           “(II) continuously operated a  
14 bona fide farm, ranch, or other busi-  
15 ness on the parcel; and

16           “(iii) the owners of at least 50 percent  
17 of the undivided interests in the parcel if,  
18 based on the final appraisal prepared pur-  
19 suant to subparagraph (F), the Secretary  
20 determines that any person’s undivided  
21 trust or restricted interest in the parcel  
22 has a value in excess of \$1,000, except  
23 that the Secretary may consent on behalf  
24 of undetermined heirs, minors, and legal  
25 incompetents having no legal guardian,



1           and missing owners or owners whose  
 2           whereabouts are unknown but only after a  
 3           search for such owners has been completed  
 4           in accordance with the provisions of this  
 5           subsection.

6           “(D) PRELIMINARY APPRAISAL.—After the  
 7           Secretary has determined that the subject par-  
 8           cel is a parcel of highly fractionated Indian land  
 9           pursuant to subparagraph (B), the Secretary  
 10          shall cause a preliminary appraisal of the sub-  
 11          ject parcel to be made.

12          “(E) NOTICE TO OWNERS ON COMPLETION  
 13          OF PRELIMINARY APPRAISAL.—Upon comple-  
 14          tion of the preliminary appraisal, the Secretary  
 15          shall give written notice of the requested parti-  
 16          tion and preliminary appraisal to all owners of  
 17          undivided interests in the parcel, in accordance  
 18          with the following requirements:

19               “(i) CONTENTS OF NOTICE.—The no-  
 20               tice required by this subsection shall  
 21               state—

22                       “(I) that a proceeding to parti-  
 23                       tion the parcel of land by sale has  
 24                       been commenced;

1 “(II) the legal description of the  
2 subject parcel;

3 “(III) the owner’s ownership in-  
4 terest in the subject parcel;

5 “(IV) the results of the prelimi-  
6 nary appraisal;

7 “(V) the owner’s right to request  
8 a copy of the preliminary appraisal;

9 “(VI) the owner’s right to com-  
10 ment on the proposed partition and  
11 the preliminary appraisal;

12 “(VII) the date by which the  
13 owner’s comments must be received,  
14 which shall not be less than 60 days  
15 after the date that the notice is  
16 mailed or published under paragraph  
17 (2); and

18 “(VIII) the address for request-  
19 ing copies of the preliminary appraisal  
20 and for submitting written comments.

21 “(ii) MANNER OF SERVICE.—

22 “(I) SERVICE BY MAIL.—The  
23 Secretary shall attempt to provide all  
24 owners of interests in the subject par-  
25 cel with actual notice of the partition

1 proceeding by mailing a copy of the  
2 written notice described in clause (i)  
3 by first class mail to each such owner  
4 at the owner's last known address. In  
5 the event the written notice to an  
6 owner is returned undelivered, the  
7 Secretary shall, in accordance with  
8 regulations adopted to implement the  
9 provisions of this section, attempt to  
10 obtain a current address for such  
11 owner by inquiring with—

12 “(aa) the owner's relatives,  
13 if any are known;

14 “(bb) the Indian tribe of  
15 which the owner is a member;  
16 and

17 “(cc) the Indian tribe with  
18 jurisdiction over the subject par-  
19 cel.

20 “(II) SERVICE BY PUBLICA-  
21 TION.—In the event that the Sec-  
22 retary is unable to serve the notice by  
23 mail pursuant to subclause (II), the  
24 notice shall be served by publishing  
25 the notice 2 times in a newspaper of

1                   general circulation in the county or  
2                   counties where the subject parcel of  
3                   land is located.

4                   “(F) FINAL APPRAISAL.—After reviewing  
5                   and considering comments or information sub-  
6                   mitted by any owner of an interest in the parcel  
7                   in response to the notice required under sub-  
8                   paragraph (E), the Secretary may—

9                   “(i) modify the preliminary appraisal  
10                  and, as modified, determine it to be the  
11                  final appraisal for the parcel; or

12                  “(ii) determine that preliminary ap-  
13                  praisal should be the final appraisal for the  
14                  parcel, without modifications.

15                  “(G) NOTICE TO OWNERS ON DETERMINA-  
16                  TION OF FINAL APPRAISAL.—Upon making the  
17                  determination under subparagraph (F) the Sec-  
18                  retary shall provide to each owner of the parcel  
19                  of land and the Indian tribe with jurisdiction  
20                  over the subject land, written notice served in  
21                  accordance with subparagraph (E)(ii) stating—

22                   “(i) the results of the final appraisal;

23                   “(ii) the owner’s right to review a  
24                   copy of the appraisal upon request; and

1 “(iii) that the land will be sold in ac-  
2 cordance with subparagraph (G) for not  
3 less than the final appraised value subject  
4 to the consent requirements under para-  
5 graph (2)(C).

6 “(H) SALE.—Subject to the requirements  
7 of paragraph (2)(C), the Secretary shall—

8 “(i) provide every owner of the parcel  
9 of land and the Indian tribe with jurisdic-  
10 tion over the subject land with notice  
11 that—

12 “(I) the decision to partition by  
13 sale is final; and

14 “(II) each owner has the right to  
15 appeal the determination of the Sec-  
16 retary to partition the parcel of land  
17 by sale, including the right to appeal  
18 the final appraisal;

19 “(ii) after providing public notice of  
20 the sale pursuant to regulations adopted  
21 by the Secretary to implement this sub-  
22 section, offer to sell the land by competi-  
23 tive bid for not less than the final ap-  
24 praised value to the highest bidder from  
25 among the following eligible bidders:

1                   “(I) any owner of a trust or re-  
2                   stricted interest in the parcel being  
3                   sold;

4                   “(II) the Indian tribe, if any,  
5                   with jurisdiction over the parcel being  
6                   sold; and

7                   “(III) any member of the Indian  
8                   tribe described in subclause (II); and  
9                   “(iii) if no bidder described in clause  
10                  (ii) presents a bid that equals or exceeds  
11                  the appraised value, provide notice to the  
12                  owners of the parcel of land and terminate  
13                  the partition process.

14               “(I) DECISION NOT TO SELL.—If the re-  
15               quired owners do not consent to the partition  
16               by sale of the parcel of land, in accordance with  
17               paragraph (2)(C), by a date established by the  
18               Secretary, the Secretary shall provide each In-  
19               dian tribe with jurisdiction over the subject  
20               land and each owner notice of that fact.

21               “(3) ENFORCEMENT.—

22               “(A) IN GENERAL.—If a partition is ap-  
23               proved under this subsection and an owner of  
24               an interest in the parcel of land refuses to sur-  
25               render possession in accordance with the parti-

tion decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may—

“(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

“(ii) request that the court issue an appropriate order for the partition of the land in kind or by sale.

“(B) FEDERAL ROLE.—With respect to any civil action brought under subparagraph (A)—

“(i) the United States—

“(I) shall receive notice of the civil action; and

“(II) may be a party to the civil action; and

“(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is 1 against the United States or that the United States is an indispensable party.

“(4) REGULATIONS.—The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection.”.

1 **SEC. 5. OWNER-MANAGED INTERESTS.**

2 The Indian Land Consolidation Act (25 U.S.C. 2201  
3 et seq.) is amended by adding at the end the following:

4 **“SEC. 221. OWNER-MANAGED INTERESTS.**

5 “(a) PURPOSE.—The purpose of this section is to  
6 provide a means for the co-owners of trust or restricted  
7 interests in a parcel of land to enter into surface leases  
8 of such parcel without approval of the Secretary.

9 “(b) MINERAL INTERESTS.—Nothing in this section  
10 shall be construed to limit or otherwise affect the applica-  
11 tion of any Federal law requiring the Secretary to approve  
12 mineral leases or other agreements for the development  
13 of the mineral interest in trust or restricted land.

14 “(c) OWNER MANAGEMENT.—

15 “(1) IN GENERAL.—Notwithstanding any provi-  
16 sion of Federal law requiring the Secretary to ap-  
17 prove individual Indian leases or mortgages of indi-  
18 vidual Indian trust or restricted land, where the  
19 owners of all of the undivided trust or restricted in-  
20 terests in a parcel of land have submitted applica-  
21 tions to the Secretary pursuant to subsection (a),  
22 and the Secretary has approved such applications  
23 under subsection (d), such owners may, without fur-  
24 ther approval by the Secretary, do either of the fol-  
25 lowing with respect to their interest in such parcel:



1           “(A) Enter into a lease of the parcel for  
 2           any purpose authorized by section 1 of the Act  
 3           of August 9, 1955 (25 U.S.C. 415(a)), for an  
 4           initial term not to exceed 25 years.

5           “(B) Renew any lease described in para-  
 6           graph (1) for 1 renewal term not to exceed 25  
 7           years.

8           “(2) RULE OF CONSTRUCTION.—No such lease  
 9           or renewal of a lease shall be effective until the own-  
 10          ers of all undivided trust or restricted interests in  
 11          the parcel have executed such lease or renewal.

12          “(d) APPROVAL OF APPLICATIONS FOR OWNER MAN-  
 13          AGEMENT.—

14           “(1) IN GENERAL.—Subject to the provisions of  
 15          paragraph (2), the Secretary shall approve an appli-  
 16          cation for owner management submitted by a quali-  
 17          fied applicant pursuant to this section unless the  
 18          Secretary has reason to believe that the applicant is  
 19          submitting the application as the result of fraud or  
 20          undue influence.

21           “(2) COMMENCEMENT OF OWNER-MANAGEMENT  
 22          STATUS.—Notwithstanding the approval of 1 or  
 23          more applications pursuant to paragraph (1), no in-  
 24          terest in a parcel of trust or restricted land shall  
 25          have owner-management status until applications for

1 all of the trust or restricted interests in such parcel  
2 have been submitted and approved by the Secretary  
3 pursuant to this section and in accordance with reg-  
4 ulations adopted pursuant to subsection (l).

5 “(e) VALIDITY OF LEASES.—A lease of trust or re-  
6 stricted interests in a parcel of land that is owner-man-  
7 aged under this section that violates any requirement or  
8 limitation set forth in subsection (c) shall be null and void  
9 and unenforceable against the owners of such interests,  
10 or against the land, the interest or the United States.

11 “(f) LEASE REVENUES.—The Secretary shall not be  
12 responsible for the collection of, or accounting for, any  
13 lease revenues accruing to any interests subject to this sec-  
14 tion while such interest is in owner-management status  
15 under the provisions of this section.

16 “(g) JURISDICTION.—

17 “(1) JURISDICTION UNAFFECTED BY STATUS.—

18 The Indian tribe with jurisdiction over an interest in  
19 trust or restricted land that becomes owner-managed  
20 in accordance with this section shall continue to  
21 have jurisdiction over the interest in trust or re-  
22 stricted land to the same extent and in all respects  
23 the tribe had prior to the interest acquiring owner  
24 managed status.

1           “(2) PERSONS USING LAND.—Any person hold-  
 2           ing, leasing, or otherwise using such interest in land  
 3           shall be considered to consent to the jurisdiction of  
 4           the Indian tribe with jurisdiction over the interest,  
 5           including such tribe’s laws and regulations, if any,  
 6           relating to the use, and any effects associated with  
 7           the use, of the interest.

8           “(h) CONTINUATION OF OWNER-MANAGED STATUS;  
 9   REVOCATION.—

10           “(1) IN GENERAL.—Subject to the provisions of  
 11           paragraph (2), after the applications of the owners  
 12           of all of the trust or restricted interests in a parcel  
 13           of land have been approved by the Secretary pursu-  
 14           ant to subsection (d), each such interest shall con-  
 15           tinue in owner-managed status under this section  
 16           notwithstanding any subsequent conveyance of the  
 17           interest in trust or restricted status to another per-  
 18           son or the subsequent descent of the interest in trust  
 19           or restricted status by testate or intestate succession  
 20           to 1 or more heirs.

21           “(2) REVOCATION.—Owner-managed status of  
 22           an interest may be revoked upon written request of  
 23           owners (including the parents or legal guardians of  
 24           minors or incompetent owners) of all trust or re-  
 25           stricted interests in the parcel, submitted to the Sec-

1       retary in accordance with regulations adopted under  
 2       subsection (l). The revocation shall become effective  
 3       as of the date on which the last of all such requests  
 4       have been delivered to the Secretary.

5           “(3) EFFECT OF REVOCATION.—Revocation of  
 6       owner-managed status under paragraph (2) shall not  
 7       affect the validity of any lease made in accordance  
 8       with the provisions of this section prior to the effec-  
 9       tive date of the revocation, provided that, after such  
 10      revocation becomes effective, the Secretary shall be  
 11      responsible for the collection of, and accounting for,  
 12      all future lease revenues accruing to the trust or re-  
 13      stricted interests in the parcel from and after such  
 14      effective date.

15      “(i) DEFINED TERMS.—

16           “(1) For purposes of subsection (d)(1), the  
 17      term ‘qualified applicant’ means—

18           “(A) a person over the age of 18 who owns  
 19      a trust or restricted interest in a parcel of land;  
 20      and

21           “(B) the parent or legal guardian of a  
 22      minor or incompetent person who owns a trust  
 23      or restricted interest in a parcel of land.

1           “(2) For purposes of this section, the term  
2           ‘owner-managed status’ means, with respect to a  
3           trust or restricted interest, that the interest—

4                   “(A) is a trust or restricted interest in a  
5           parcel of land for which applications covering  
6           all trust or restricted interests in such parcel  
7           have been submitted to and approved by the  
8           Secretary pursuant to subsection (d);

9                   “(B) may be leased without approval of the  
10          Secretary pursuant to, and in a manner that is  
11          consistent with the requirements of, this sec-  
12          tion; and

13                  “(C) no revocation has occurred under  
14          subsection (h)(2).

15          “(j) SECRETARIAL APPROVAL OF OTHER TRANS-  
16          ACTIONS.—Except with respect to the specific lease trans-  
17          actions described in paragraphs (1) and (2) of subsection  
18          (c), interests held in owner-managed status under the pro-  
19          visions of this section shall continue to be subject to all  
20          Federal laws requiring the Secretary to approve trans-  
21          actions involving trust or restricted land that would other-  
22          wise apply to such interests.

23          “(k) EFFECT OF SECTION.—Subject to subsections  
24          (c), (f), and (h), nothing in this section limits or otherwise

1 affects any authority or responsibility of the Secretary  
 2 with respect to an interest in trust or restricted land.

3 “(l) REGULATIONS.—The Secretary shall promulgate  
 4 such regulations as are necessary to carry out this sec-  
 5 tion.”.

6 **SEC. 6. ADDITIONAL AMENDMENTS.**

7 (a) IN GENERAL.—The Indian Land Consolidation  
 8 Act (25 U.S.C. 2201 et seq.) is amended—

9 (1) in the second sentence of section 205(a) (25  
 10 U.S.C. 2204(a)), by striking “over 50 per centum of  
 11 the undivided interests” and inserting “undivided in-  
 12 terests equal to at least 50 percent of the undivided  
 13 interest”;

14 (2) in section 205 (25 U.S.C. 2204), by adding  
 15 subsection (c) as follows:

16 “(c) PURCHASE OPTION AT PROBATE.—

17 “(1) IN GENERAL.—Subject to section  
 18 207(b)(2)(A) of this Act (25 U.S.C. 2206(b)(2)(A)),  
 19 interests in a parcel of trust or restricted land in the  
 20 decedent’s estate may be purchased at probate in ac-  
 21 cordance with the provisions of this subsection.

22 “(2) SALE OF INTEREST AT MINIMUM FAIR  
 23 MARKET VALUE.—Subject to paragraph (3), the Sec-  
 24 retary is authorized to sell trust or restricted inter-  
 25 ests subject to this subsection at no less than fair

1 market value to the highest bidder from among the  
2 following eligible bidders:

3 “(A) The heirs taking by intestate succes-  
4 sion or the devisees listed in section  
5 207(a)(1)(A).

6 “(B) All persons who own undivided trust  
7 or restricted interests in the same parcel of  
8 land involved in the probate proceeding.

9 “(C) The Indian tribe with jurisdiction  
10 over the interest, or the Secretary on behalf of  
11 such Indian tribe.

12 “(3) REQUEST FOR AUCTION.—No auction and  
13 sale of an interest in probate shall occur under this  
14 subsection unless—

15 “(A) except as provided in paragraph (6),  
16 the heirs or devisees of such interest consent to  
17 the sale; and

18 “(B) a person or the Indian tribe eligible  
19 to bid on the interest under paragraph (2) sub-  
20 mits a request for the auction prior to the dis-  
21 tribution of the interest to heirs or devisees of  
22 the decedent and in accordance with any regu-  
23 lations of the Secretary.

1           “(4) APPRAISAL AND NOTICE.—Prior to the  
2           sale of an interest pursuant to this subsection, the  
3           Secretary shall—

4                   “(A) appraise the interest; and

5                   “(B) publish notice of the time and place  
6           of the auction (or the time and place for sub-  
7           mitting sealed bids), a description, and the ap-  
8           praised value, of the interest to be sold.

9           “(5) RIGHTS OF SURVIVING SPOUSE.—Nothing  
10          in this subsection shall be construed to diminish or  
11          otherwise affect the rights of a surviving spouse  
12          under section 207(b)(2)(A).

13          “(6) HIGHLY FRACTIONATED INDIAN LANDS.—  
14          Notwithstanding paragraph (3)(A), the consent of  
15          an heir shall not be required for the auction and sale  
16          of an interest at probate under this subsection if—

17                   “(A) the interest is passing by intestate  
18          succession; and

19                   “(B) prior to the auction the Secretary de-  
20          termines that the interest involved is an interest  
21          in a parcel of highly fractionated Indian land.

22          “(7) REGULATIONS.—The Secretary shall pro-  
23          mulgate regulations to implement the provisions of  
24          this subsection.”;

25          (3) in section 206 (25 U.S.C. 2205)—



1 (A) in subsection (a), by striking para-  
 2 graph (3) and inserting the following:

3 “(3) TRIBAL PROBATE CODES.—Except as pro-  
 4 vided in any applicable Federal law, the Secretary  
 5 shall not approve a tribal probate code, or an  
 6 amendment to such a code, that prohibits the devise  
 7 of an interest in trust or restricted land by—

8 “(A) an Indian lineal descendant of the  
 9 original allottee; or

10 “(B) an Indian who is not a member of the  
 11 Indian tribe with jurisdiction over such an in-  
 12 terest;

13 unless the code provides for—

14 “(i) the renouncing of interests to eligible devi-  
 15 sees in accordance with the code;

16 “(ii) the opportunity for a devisee who is the  
 17 spouse or lineal descendant of a testator to reserve  
 18 a life estate without regard to waste; and

19 “(iii) payment of fair market value in the man-  
 20 ner prescribed under subsection (c)(2).”; and

21 (B) in subsection (c)—

22 (i) in paragraph (1)—

23 (I) by striking the paragraph  
 24 heading and inserting the following:

25 “(1) AUTHORITY.—

1 “(A) IN GENERAL.—”;

2 (II) in the first sentence of sub-  
 3 paragraph (A) (as redesignated by  
 4 clause (i)), by striking “section  
 5 207(a)(6)(A) of this title” and insert-  
 6 ing “section 207(a)(2)(A)(ii) of this  
 7 title”; and

8 (III) by striking the last sentence  
 9 and inserting the following:

10 “(B) TRANSFER.—The Secretary shall  
 11 transfer payments received under subparagraph  
 12 (A) to any person or persons who would have  
 13 received an interest in land if the interest had  
 14 not been acquired by the Indian tribe in accord-  
 15 ance with this paragraph.”; and

16 (ii) in paragraph (2)—

17 (I) in subparagraph (A)—

18 (aa) by striking the subpara-  
 19 graph heading and all that fol-  
 20 lows through “Paragraph (1)  
 21 shall not apply” and inserting the  
 22 following:

23 “(A) INAPPLICABILITY TO CERTAIN INTER-  
 24 ESTS.—

1 “(i) IN GENERAL.—Paragraph (1)  
2 shall not apply”;

3 (bb) in clause (i) (as redes-  
4 ignated by item (aa)), by striking  
5 “if, while” and inserting the fol-  
6 lowing: “if—  
7 “(I) while”;

8 (cc) by striking the period at  
9 the end and inserting “; or”; and

10 (dd) by adding at the end  
11 the following:

12 “(II)—

13 “(aa) the interest is part of  
14 a family farm that is devised to  
15 a member of the family of the de-  
16 cedent; and

17 “(bb) the devisee agrees that  
18 the Indian tribe with jurisdiction  
19 over the land will have the oppor-  
20 tunity to acquire the interest for  
21 fair market value if the interest  
22 is offered for sale to an entity  
23 that is not a member of the fam-  
24 ily of the owner of the land.

1           “(ii) RECORDING OF INTEREST.—On  
 2 request by an Indian tribe described in  
 3 clause (i)(II)(bb), a restriction relating to  
 4 the acquisition by the Indian tribe of an  
 5 interest in a family farm involved shall be  
 6 recorded as part of the deed relating to the  
 7 interest involved.

8           “(iii) MORTGAGE AND FORE-  
 9 CLOSURE.—Nothing in clause (i)(II) pre-  
 10 vents or limits the ability of an owner of  
 11 land to which that clause applies to mort-  
 12 gage the land or limit the right of the enti-  
 13 ty holding such a mortgage to foreclose or  
 14 otherwise enforce such a mortgage agree-  
 15 ment in accordance with applicable law.

16           “(iv) DEFINITION OF ‘MEMBER OF  
 17 THE FAMILY’.—In this paragraph, the  
 18 term ‘member of the family’, with respect  
 19 to a decedent or landowner, means—

20                   “(I) a lineal descendant of a de-  
 21 cedent or landowner;

22                   “(II) a lineal descendant of the  
 23 grandparent of a decedent or land-  
 24 owner;

1 “(III) the spouse of a descendant  
 2 or landowner described in subclause  
 3 (I) or (II); and

4 “(IV) the spouse of a decedent or  
 5 landowner.”;

6 (4) in subparagraph (B), by striking “subpara-  
 7 graph (A)” and all that follows through  
 8 “207(a)(6)(B) of this title” and inserting “para-  
 9 graph (1)”;

10 (5) in section 207 (25 U.S.C. 2206), subsection  
 11 (g)(5), by striking “this section” and inserting “sub-  
 12 sections (a) and (b)”;

13 (6) in section 213 (25 U.S.C. 2212)—

14 (A) by striking the section heading and in-  
 15 serting the following:

16 **“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PRO-**  
 17 **GRAM.”;**

18 (B) in subsection (a)—

19 (i) by striking “(2) AUTHORITY OF  
 20 SECRETARY.—” and all that follows  
 21 through “the Secretary shall submit” and  
 22 inserting the following:

23 “(2) AUTHORITY OF SECRETARY.—The Sec-  
 24 retary shall submit”; and

1 (ii) by striking “whether the program  
 2 to acquire fractional interests should be ex-  
 3 tended or altered to make resources” and  
 4 inserting “how the fractional interest ac-  
 5 quisition program should be enhanced to  
 6 increase the resources made”;

7 (C) in subsection (b), by striking para-  
 8 graph (4) and inserting the following:

9 “(4) shall minimize the administrative costs as-  
 10 sociated with the land acquisition program through  
 11 the use of policies and procedures designed to ac-  
 12 commodate the voluntary sale of interests under the  
 13 pilot program under this section, notwithstanding  
 14 the existence of any otherwise applicable policy, pro-  
 15 cedure, or regulation, through the elimination of du-  
 16 plicate—

17 “(A) conveyance documents;

18 “(B) administrative proceedings; and

19 “(C) transactions.”.

20 (D) in subsection (c)—

21 (i) in paragraph (1)—

22 (I) in subparagraph (A), by strik-  
 23 ing “at least 5 percent of the” and in-  
 24 serting in its place “an”;

1 (II) in subparagraph (A), by in-  
2 serting “in such parcel” following  
3 “the Secretary shall convey an inter-  
4 est”;

5 (III) in subparagraph (A), by  
6 striking “landowner upon payment”  
7 and all that follows and inserting the  
8 following: “landowner—

9 “(i) on payment by the Indian land-  
10 owner of the amount paid for the interest  
11 by the Secretary; or

12 “(ii) if—

13 “(I) the Indian referred to in this  
14 subparagraph provides assurances  
15 that the purchase price will be paid by  
16 pledging revenue from any source, in-  
17 cluding trust resources; and

18 “(II) the Secretary determines  
19 that the purchase price will be paid in  
20 a timely and efficient manner.”; and

21 (IV) in subparagraph (B), by in-  
22 serting before the period at the end  
23 the following: “unless the interest is  
24 subject to a foreclosure of a mortgage

1 in accordance with the Act of March  
 2 29, 1956 (25 U.S.C. 483a)”; and

3 (ii) in paragraph (3), by striking “10  
 4 percent or more of the undivided interests”  
 5 and inserting “an undivided interest”;

6 (7) in section 214 (25 U.S.C. 2213), by striking  
 7 subsection (b) and inserting the following:

8 “(b) APPLICATION OF REVENUE FROM ACQUIRED  
 9 INTERESTS TO LAND CONSOLIDATION PROGRAM.—

10 “(1) IN GENERAL.—The Secretary shall have a  
 11 lien on any revenue accruing to an interest described  
 12 in subsection (a) until the Secretary provides for the  
 13 removal of the lien under paragraph (3), (4), or (5).

14 “(2) REQUIREMENTS.—

15 “(A) IN GENERAL.—Until the Secretary  
 16 removes a lien from an interest in land under  
 17 paragraph (1)—

18 “(i) any lease, resource sale contract,  
 19 right-of-way, or other document evidencing  
 20 a transaction affecting the interest shall  
 21 contain a clause providing that all revenue  
 22 derived from the interest shall be paid to  
 23 the Secretary; and

24 “(ii) any revenue derived from any in-  
 25 terest acquired by the Secretary in accord-



1                   ance with section 213 shall be deposited in  
2                   the fund created under section 216.

3                   “(B) APPROVAL OF TRANSACTIONS.—Not-  
4                   withstanding section 16 of the Act of June 18,  
5                   1934 (commonly known as the ‘Indian Reorga-  
6                   nization Act’) (25 U.S.C. 476), or any other  
7                   provision of law, until the Secretary removes a  
8                   lien from an interest in land under paragraph  
9                   (1), the Secretary may approve a transaction  
10                  covered under this section on behalf of an In-  
11                  dian tribe.

12                  “(3) REMOVAL OF LIENS AFTER FINDINGS.—  
13                  The Secretary may remove a lien referred to in  
14                  paragraph (1) if the Secretary makes a finding  
15                  that—

16                       “(A) the costs of administering the interest  
17                       from which revenue accrues under the lien will  
18                       equal or exceed the projected revenues for the  
19                       parcel of land involved;

20                       “(B) in the discretion of the Secretary, it  
21                       will take an unreasonable period of time for the  
22                       parcel of land to generate revenue that equals  
23                       the purchase price paid for the interest; or

24                       “(C) a subsequent decrease in the value of  
25                       land or commodities associated with the parcel

1 of land make it likely that the interest will be  
 2 unable to generate revenue that equals the pur-  
 3 chase price paid for the interest in a reasonable  
 4 time.

5 “(4) REMOVAL OF LIENS UPON PAYMENT INTO  
 6 THE ACQUISITION FUND.—The Secretary shall re-  
 7 move a lien referred to in paragraph (1) upon pay-  
 8 ment of an amount equal to the purchase price of  
 9 that interest in land into the Acquisition Fund cre-  
 10 ated under section 2215 of this title, except where  
 11 the tribe with jurisdiction over such interest in land  
 12 authorizes the Secretary to continue the lien in order  
 13 to generate additional acquisition funds.

14 “(5) OTHER REMOVAL OF LIENS.—In accord-  
 15 ance with regulations to be promulgated by the Sec-  
 16 retary, and in consultation with tribal governments  
 17 and other entities described in section 213(b)(3), the  
 18 Secretary shall periodically remove liens referred to  
 19 in paragraph (1) from interests in land acquired by  
 20 the Secretary.”;

21 (8) in section 216 (25 U.S.C. 2215)—

22 (A) in subsection (a), by striking para-  
 23 graph (2) and inserting the following:

24 “(2) collect all revenues received from the lease,  
 25 permit, or sale of resources from interests acquired

1 under section 213 or paid by Indian landowners  
2 under section 213.”; and

3 (B) in subsection (b)—

4 (i) in paragraph (1)—

5 (I) in the matter preceding sub-  
6 paragraph (A), by striking “Subject  
7 to paragraph (2), all” and inserting  
8 “All”;

9 (II) in subparagraph (A), by  
10 striking “and” at the end;

11 (III) in subparagraph (B), by  
12 striking the period at the end and in-  
13 serting “; and”; and

14 (IV) by adding at the end the fol-  
15 lowing:

16 “(C) be used to acquire undivided interests  
17 on the reservation from which the income was  
18 derived.”; and

19 (ii) by striking paragraph (2) and in-  
20 serting the following:

21 “(2) USE OF FUNDS.—The Secretary may use  
22 the revenue deposited in the Acquisition Fund under  
23 paragraph (1) to acquire some or all of the undi-  
24 vided interests in any parcels of land in accordance  
25 with section 205.”;

1 (9) in section 217 (25 U.S.C. 2216)—

2 (A) in subsection (b)(1) by striking sub-  
3 paragraph (B) and inserting a new subpara-  
4 graph (B) as follows—

5 “(B) WAIVER OF REQUIREMENT.—The re-  
6 quirement for an estimate of value under sub-  
7 paragraph (A) may be waived in writing by an  
8 owner of an interest in trust or restricted land  
9 either selling, exchanging, or conveying by gift  
10 deed for no or nominal consideration such inter-  
11 est—

12 “(i) to an Indian person who is the  
13 owner’s spouse, brother, sister, lineal an-  
14 cestor, lineal descendant, or collateral heir;  
15 or

16 “(ii) to an Indian co-owner or to a  
17 tribe with jurisdiction over the subject par-  
18 cel of land, where the grantor owns a frac-  
19 tional interest that represents 5 percent or  
20 less of the parcel.”.

21 (B) in subsection (e), by striking the mat-  
22 ter preceding paragraph (1), and inserting  
23 “Notwithstanding any other provision of law,  
24 the names and mailing addresses of the owners  
25 of any interest in trust or restricted lands, and

1 information on the location of the parcel and  
 2 the percentage of undivided interest owned by  
 3 each individual shall, upon written request, be  
 4 made available to—”;

5 (C) in subsection (e)(1), by striking “In-  
 6 dian”;

7 (D) in subsection (e)(3), by striking “pro-  
 8 spective applicants for the leasing, use, or con-  
 9 solidation of” and insert “any person that is  
 10 leasing, using, or consolidating, or is applying  
 11 to lease, use, or consolidate,”; and

12 (E) by striking subsection (f) and inserting  
 13 the following:

14 “(f) PURCHASE OF LAND BY INDIAN TRIBE.—

15 “(1) IN GENERAL.—Except as provided in para-  
 16 graph (2), before the Secretary approves an applica-  
 17 tion to terminate the trust status or remove the re-  
 18 strictions on alienation from a parcel of trust or re-  
 19 stricted land, the Indian tribe with jurisdiction over  
 20 the parcel shall have the opportunity—

21 “(A) to match any offer contained in the  
 22 application; or

23 “(B) in a case in which there is no pur-  
 24 chase price offered, to acquire the interest in

1 the parcel by paying the fair market value of  
 2 the interest.

3 “(2) EXCEPTION FOR FAMILY FARMS.—

4 “(A) IN GENERAL.—Paragraph (1) shall  
 5 not apply to a parcel of trust or restricted land  
 6 that is part of a family farm that is conveyed  
 7 to a member of the family of a landowner (as  
 8 defined in section 206(c)(2)(A)(iv)) if the con-  
 9 veyance requires that in the event that the in-  
 10 terest is offered for sale to an entity that is not  
 11 a member of the family of the landowner, the  
 12 Indian tribe with jurisdiction over the land shall  
 13 be afforded the opportunity to purchase the in-  
 14 terest pursuant to paragraph (1).

15 “(B) APPLICABILITY OF OTHER PROVI-  
 16 SION.—Section 206(c)(2)(A) shall apply with  
 17 respect to the recording and mortgaging of any  
 18 trust or restricted land referred to in subpara-  
 19 graph (A).”; and

20 (10) in section 219(b)(1)(A) (25 U.S.C.  
 21 2218(b)(1)(A)), by striking “100” and inserting  
 22 “90”.

23 (b) DEFINITIONS.—Section 202 of the Indian Land  
 24 Consolidation Act (25 U.S.C. 2201) is amended—

1           (1) by striking paragraph (2) and inserting the  
2 following:

3           “(2) ‘Indian’ means—

4                 “(A) any person who is a member of any  
5 Indian tribe, is eligible to become a member of  
6 any Indian tribe, or is an owner (as of the date  
7 of enactment of the American Indian Probate  
8 Reform Act of 2003) of an interest in trust or  
9 restricted land;

10                “(B) any person meeting the definition of  
11 Indian under the Indian Reorganization Act (25  
12 U.S.C. 479) and the regulations promulgated  
13 thereunder;

14                “(C) any person not included in subpara-  
15 graph (A) or (B) who is a lineal descendant  
16 within 3 degrees of a person described in sub-  
17 paragraph (A);

18                “(D) an owner of a trust or restricted in-  
19 terest in a parcel of land for purposes of inher-  
20 iting another trust or restricted interest in such  
21 parcel; and

22                “(E) with respect to the ownership, devise,  
23 or descent of trust or restricted land in the  
24 State of California, any person who meets the  
25 definition of ‘Indians of California’ contained in

1 the first section of the Act of May 18, 1928 (25  
2 U.S.C. 651), until otherwise provided by Con-  
3 gress in accordance with section 809(b) of the  
4 Indian Health Care Improvement Act (25  
5 U.S.C. 1679)(b)).”; and

6 (2) by adding at the end the following:

7 “(6) ‘Parcel of highly fractionated Indian land’  
8 means a parcel of land that the Secretary, pursuant  
9 to authority under a provision of this Act, deter-  
10 mines to have at the time of the determination—

11 “(A)(i) 100 or more but less than 200 co-  
12 owners of undivided trust or restricted inter-  
13 ests; and

14 “(ii) no undivided trust or restricted inter-  
15 est owned by any 1 person which represents  
16 more than 2 percent of the total undivided own-  
17 ership of the parcel; or

18 “(B)(i) 200 or more but less than 350 co-  
19 owners of undivided trust or restricted inter-  
20 ests; and

21 “(ii) no undivided trust or restricted inter-  
22 est owned by any 1 person which represents  
23 more than 5 percent of the total undivided own-  
24 ership of the parcel; or



1                   “(C) 350 or more co-owners of undivided  
2                   trust or restricted interests.

3                   “(7) ‘Person’ means a natural person.”.

4           (c) ISSUANCE OF PATENTS.—Section 5 of the Act of  
5   February 8, 1887 (25 U.S.C. 348), is amended by striking  
6   the second proviso and inserting the following: ‘*Provided*,  
7   That the rules of intestate succession under the Indian  
8   Land Consolidation Act (25 U.S.C. 2201 et seq.) (includ-  
9   ing a tribal probate code approved under that Act or regu-  
10   lations promulgated under that Act) shall apply to that  
11   land for which patents have been executed and delivered:”.

12          (d) TRANSFERS OF RESTRICTED INDIAN LAND.—  
13   Section 4 of the Act of June 18, 1934 (25 U.S.C. 464),  
14   is amended in the first proviso by—

15               (1) striking “, in accordance with” and all that  
16               follows through “or in which the subject matter of  
17               the corporation is located,”;

18               (2) striking “, except as provided by the Indian  
19               Land Consolidation Act” and all that follows  
20               through the colon; and

21               (3) inserting “in accordance with the Indian  
22               Land Consolidation Act (25 U.S.C. 2201 et seq.)  
23               (including a tribal probate code approved under that  
24               Act or regulations promulgated under that Act):”.

25          (e) ESTATE PLANNING.—

1           (1) CONDUCT OF ACTIVITIES.—Section  
 2           207(f)(1) of the Indian Land Consolidation Act (25  
 3           U.S.C. 2206) is amended by striking paragraph (1)  
 4           and inserting the following—

5           “(1) IN GENERAL.—

6                   “(A) The activities conducted under this  
 7                   subsection shall be conducted in accordance  
 8                   with any applicable—

9                           “(i) tribal probate code; or

10                           “(ii) tribal land consolidation plan.

11                   “(B) The Secretary shall provide estate  
 12                   planning assistance in accordance with this sub-  
 13                   section, to the extent amounts are appropriated  
 14                   for such purpose.”.

15           (2) REQUIREMENTS.—Section 207(f) of the In-  
 16           dian Land Consolidation Act (25 U.S.C. 2206(f)) is  
 17           amended by striking “and” at the end of subpara-  
 18           graph (A), redesignating subparagraph (B) as sub-  
 19           paragraph (D), and adding the following—

20                   “(B) dramatically increase the use of wills  
 21                   and other methods of devise among Indian  
 22                   landowners;

23                   “(C) substantially reduce the quantity and  
 24                   complexity of Indian estates that pass intestate  
 25                   through the probate process, while protecting

1           the rights and interests of Indian landowners;  
2           and”;

3           (3) by striking “(3) CONTRACTS.—” and insert-  
4           ing the following—

5           “(3) INDIAN CIVIL LEGAL ASSISTANCE  
6           GRANTS.—In carrying out this section, the Secretary  
7           shall award grants to nonprofit entities, as defined  
8           under section 501(c)(3) of the Internal Revenue  
9           Code of 1986, which provide legal assistance services  
10          for Indian tribes, individual owners of interests in  
11          trust or restricted lands, or Indian organizations  
12          pursuant to Federal poverty guidelines which submit  
13          an application to the Secretary, in such form and  
14          manner as the Secretary may prescribe, for the pro-  
15          vision of civil legal assistance to such Indian tribes,  
16          individual owners, and Indian organizations for the  
17          development of tribal probate codes, for estate plan-  
18          ning services or for other purposes consistent with  
19          the services they provide to Indians and Indian  
20          tribes.”;

21          (4) by adding at the end of section 207 (25  
22          U.S.C. 2206) the following:

23          “(k) NOTIFICATION TO LANDOWNERS.—

24          “(1) IN GENERAL.—Not later than 2 years  
25          after the date of enactment of this Act, the Sec-

1       retary shall provide to each Indian landowner a re-  
 2       port that lists, with respect to each tract of trust or  
 3       restricted land in which the Indian landowner has an  
 4       interest—

5               “(A) the location of the tract of land in-  
 6       volved;

7               “(B) the identity of each other co-owner of  
 8       interests in the parcel of land; and

9               “(C) the percentage of ownership of each  
 10      owner of an interest in the tract.

11              “(2) STATUTORY CONSTRUCTION.—Nothing in  
 12      this subsection shall preclude any individual Indian  
 13      from obtaining from the Secretary, upon the request  
 14      of that individual, any information specified in para-  
 15      graph (1) before the expiration of the 2-year period  
 16      specified in paragraph (1).

17              “(3) REQUIREMENTS FOR NOTIFICATION.—  
 18      Each notification made under paragraph (1) shall  
 19      include information concerning estate planning and  
 20      land consolidation options under the provisions of  
 21      this Act and other applicable Federal law, including  
 22      information concerning—

23               “(A) the preparation and execution of  
 24      wills;

25               “(B) negotiated sales;

1 “(C) gift deeds;

2 “(D) exchanges; and

3 “(E) life estates without regard to waste.

4 “(4) PROHIBITION.—No individual Indian may  
5 be denied access to information relating to land in  
6 which that individual has an interest described in  
7 this section on the basis of section 552a of title 5,  
8 United States Code (commonly referred to as the  
9 ‘Privacy Act’).

10 “(l) PRIVATE AND FAMILY TRUSTS PILOT  
11 PROJECT.—

12 “(1) DEVELOPMENT PILOT PROJECT.—

13 “(A) The Secretary shall consult with  
14 tribes, individual landowner organizations, In-  
15 dian advocacy organizations, and other inter-  
16 ested parties to—

17 “(i) develop a pilot project for the cre-  
18 ation and management of private and fam-  
19 ily trusts for interests in trust or restricted  
20 lands; and

21 “(ii) develop proposed rules, regula-  
22 tions, and guidelines to implement the pilot  
23 project.

24 “(B) The pilot project shall commence on  
25 the date of enactment of the American Indian

1           Probate Reform Act of 2003 and shall continue  
2           for 3 years after the date of enactment of this  
3           subsection.

4           “(2) CHARACTERISTICS OF PRIVATE AND FAM-  
5           ILY TRUSTS.—For purposes of this subsection and  
6           any proposed rules, regulations, or guidelines devel-  
7           oped under this subsection—

8                   “(A) the terms ‘private trust’ and ‘family  
9                   trust’ shall both mean trusts created pursuant  
10                  to this subsection for the management and ad-  
11                  ministration of interests in trust or restricted  
12                  land, held by 1 or more persons, which com-  
13                  prise the corpus of a trust, by a private trustee  
14                  subject to the approval of the Secretary;

15                  “(B) private and family trusts shall be cre-  
16                  ated and managed in furtherance of the pur-  
17                  poses of the Indian Land Consolidation Act (25  
18                  U.S.C. 2201 et seq.); and

19                  “(C) private and family trusts shall not be  
20                  construed to impair, impede, replace, abrogate,  
21                  or modify in any respect the trust duties or re-  
22                  sponsibilities of the Secretary, nor shall any-  
23                  thing in this subsection or in any rules, regula-  
24                  tions, or guidelines developed under this sub-  
25                  section enable any private or family trustee of

1 interests in trust or restricted lands to exercise  
2 any powers over such interests greater than  
3 that held by the Secretary with respect to such  
4 interests.

5 “(3) REPORT TO CONGRESS.—Prior to the expi-  
6 ration of the pilot project provided for under this  
7 subsection, the Secretary shall submit a report to  
8 Congress stating—

9 “(A) a description of the Secretary’s con-  
10 sultation with Indian tribes, individual land-  
11 owner associations, Indian advocacy organiza-  
12 tions, and other parties consulted with regard-  
13 ing the development of rules, regulations, and/  
14 or guidelines for the creation and management  
15 of private and family trusts over interests in  
16 trust and restricted lands;

17 “(B) the feasibility of accurately tracking  
18 such private and family trusts;

19 “(C) the impact that private and family  
20 trusts would have with respect to the accom-  
21 plishment of the goals of the Indian Land Con-  
22 solidation Act (25 U.S.C. 2201 et seq.); and

23 “(D) a final recommendation regarding  
24 whether to adopt the creation of a permanent  
25 private and family trust program as a manage-

1           ment and consolidation measure for interests in  
2           trust or restricted lands.”.

3 **SEC. 7. UNCLAIMED AND ABANDONED PROPERTY.**

4           The Indian Land Consolidation Act (25 U.S.C. 2201  
5 et seq.) (as amended by section 5) is amended by adding  
6 at the end the following:

7 **“SEC. 222. UNCLAIMED AND ABANDONED PROPERTY.**

8           “(a) INTERESTS PRESUMED ABANDONED.—An undi-  
9 vided trust or restricted interest in a parcel of land owned  
10 by a person shall be presumed abandoned and subject to  
11 the provisions of this section if the Secretary makes a de-  
12 termination that—

13           “(1) a period of 6 consecutive years next pre-  
14 ceding such determination has passed during which  
15 the person owning such interest has not made any  
16 indication or expression of interest in the trust or  
17 restricted interest as set forth in subsection (b);

18           “(2) the person owning the trust or restricted  
19 interest was, at all times during the 6-year period  
20 described in paragraph (1), over the age of 18; and

21           “(3) as of the expiration of the 6-year period  
22 described in paragraph (1), such parcel was a parcel  
23 of highly fractionated Indian land.

24           “(b) INDICATORS OF OWNER INTEREST.—For pur-  
25 poses of subsection (a), an indication or expression of an



1 owner's interest in the property shall mean the owner or  
2 any person acting on behalf of the owner—

3 “(1) making a deposit to, withdrawal from, or  
4 inquiry into an individual Indian money account as-  
5 sociated with such interest;

6 “(2) negotiating a Treasury check derived from  
7 such interest or account;

8 “(3) providing the Secretary with a valid ad-  
9 dress; or

10 “(4) communicating with the Secretary regard-  
11 ing such interest or account.

12 “(c) RELATED PROPERTY.—At the time that prop-  
13 erty is presumed to be abandoned under this section, any  
14 other property right accrued or accruing to the owner as  
15 a result of the interest, including funds in an associated  
16 individual Indian money account, that has not previously  
17 been presumed abandoned under this section, also shall  
18 be presumed abandoned.

19 “(d) ANNUAL LIST OF PROPERTY; NOTICE TO OWN-  
20 ERS.—No later than the first day of November of each  
21 year, the Secretary shall prepare and distribute a list of  
22 names of persons owning property presumed abandoned  
23 under this section during the preceding fiscal year and  
24 provide notice to such persons in accordance with the fol-  
25 lowing requirements:

1           “(1) CONTENTS OF ANNUAL LIST.—The list  
2 shall set forth—

3           “(A) the names of all persons owning in-  
4 terests in land and property presumed to be  
5 abandoned under this section;

6           “(B) with respect to each person named on  
7 the list, the reservation, if any, and the county  
8 and State in which the person’s interest in land  
9 is located;

10           “(C) the reservation, if any, the city or  
11 town, county and State of the person’s last  
12 known address; and

13           “(D) the name, address, and telephone  
14 number of the official or officials within the De-  
15 partment of the Interior to contact for purposes  
16 of identifying persons or lands included on the  
17 list.

18           “(2) DISTRIBUTION OF LIST.—The list shall be  
19 distributed to all regional offices and agencies of the  
20 Bureau of Indian Affairs and to all reservations  
21 where land described on this list is located and shall  
22 cause the list to be published in the Federal Register  
23 within 15 days after the list is prepared.

24           “(3) NOTICE BY MAIL.—In addition to pub-  
25 lishing and distributing the list described in para-

graph (1), the Secretary shall attempt to provide the persons owning such trust or restricted interests with actual written notice that the interest and any associated funds or property is presumed abandoned under the provisions of this section. Such notice shall be sent by first class mail to the owner at the owner's last known address and shall include the following:

“(A) A legal description of the parcel of which the interest is a part.

“(B) A description of the owner's interest.

“(C) A statement that the owner has not indicated or expressed an interest in the trust or restricted interest for a period of 6 consecutive years and that such interest, and any funds in an associated individual Indian money account, is presumed abandoned.

“(D) A statement that the interest will be appraised and sold for its appraised value unless the owner responds to the notice within 60 days after the notice is mailed or published.

“(E) A statement that in the event the owner fails to respond and the notice and the property is sold, the proceeds of such sale and any funds in any associated individual Indian

1 money account will be deposited in an un-  
2 claimed property account.

3 “(4) SEARCH FOR WHEREABOUTS OF OWNER.—

4 If the notice described in paragraph (3) is returned  
5 undelivered, the Secretary shall attempt to locate the  
6 owner by—

7 “(A) searching publicly available records  
8 and Federal records, including telephone and  
9 address directories and using electronic search  
10 methods;

11 “(B) inquiring with—

12 “(i) the owner’s relatives, if any are  
13 known;

14 “(ii) any Indian tribe of which the  
15 owner is a member; and

16 “(iii) the Indian tribe, if any, with ju-  
17 risdiction over the interest; and

18 “(C) if the value of the interest and any  
19 funds in an associated individual Indian money  
20 account exceeds \$1,000, engaging an inde-  
21 pendent search firm to perform a missing per-  
22 son search.

23 “(5) NOTICE BY PUBLICATION.—In the event  
24 that the Secretary is unable to locate the owner pur-  
25 suant to paragraph (4), the Secretary shall publish

1 a notice not later than November 30 following the  
2 fiscal year in which the property was presumed to be  
3 abandoned under this section. The notice shall in-  
4 clude the same information required for the notice  
5 described in paragraph (3) and shall be—

6 “(A) published in a newspaper of general  
7 circulation on or near the apparent owner’s  
8 home reservation and near the last known ad-  
9 dress of the owner; and

10 “(B) in a form that is likely to attract the  
11 attention of the apparent owner of the property.

12 “(e) CONVERSION OF ABANDONED INTERESTS.—If,  
13 after 2 years from the date the notice is published under  
14 subsection (d)(3), any such real property or interest there-  
15 in remains unclaimed, the Secretary shall appraise such  
16 property in a manner consistent with section 215 of the  
17 Indian Land Consolidation Act (25 U.S.C. 2214) and shall  
18 purchase the property at its appraised value, or sell the  
19 property to an Indian tribe with jurisdiction over such  
20 property or a person who owns an undivided trust or re-  
21 stricted interest in such property, by competitive bid for  
22 not less than the appraised value. The Secretary shall then  
23 transfer any monetary interest that the Secretary holds  
24 for the previous apparent owner to the unclaimed property  
25 account described in subsection (f).

1 “(f) UNCLAIMED PROPERTY ACCOUNT.—

2 “(1) Except as otherwise provided by this sec-  
 3 tion, the Secretary shall promptly deposit in a spe-  
 4 cial unclaimed property account all funds received  
 5 under this section. The Secretary shall pay all claims  
 6 under subsection (g) from this account. The Sec-  
 7 retary shall record the name and last known address  
 8 of each person appearing to be entitled to the prop-  
 9 erty.

10 “(2) The Secretary is authorized to use interest  
 11 earned on the special unclaimed property account to  
 12 pay—

13 “(A) the administrative costs of conversion  
 14 of real property under subsection (g); and

15 “(B) costs of mailing and publication in  
 16 connection with abandoned property.

17 “(3) The Secretary shall retain a sufficient bal-  
 18 ance in the account at all times from which to pay  
 19 claims duly allowed. All other funds shall be avail-  
 20 able to the Secretary to use for the purposes of land  
 21 consolidation pursuant to 25 U.S.C. 2212.

22 “(g) CLAIMS.—

23 “(1) FILING OF CLAIM.—An individual, or the  
 24 heirs of an individual, may file a claim to recover

1 property or the proceeds of the conversion of the  
2 property on a form prescribed by the Secretary.

3 “(2) ALLOWANCE OR DENIAL OF CLAIM.—Not  
4 more than 180 days after a claim is filed, the Sec-  
5 retary shall allow or deny the claim and give written  
6 notice of the decision to the claimant. If the claim  
7 is denied, the Secretary shall inform the claimant of  
8 the reasons for the denial and specify what addi-  
9 tional evidence is required before the claim will be  
10 allowed. The claimant may then file a new claim  
11 with the Secretary or maintain an action under this  
12 subsection.

13 “(3) PAYMENT OF ALLOWED CLAIM.—Not more  
14 than 60 days after a claim is allowed, the property  
15 or the net proceeds of the conversion of the property  
16 shall be delivered or paid by the Secretary to the  
17 claimant, together with any interest, or other incre-  
18 ment to which the claimant is entitled under this  
19 section.

20 “(4) JUDICIAL REVIEW.—An individual ag-  
21 grieved by a decision of the Secretary under this  
22 subsection or whose claim has not been acted upon  
23 within 180 days may, after exhausting administra-  
24 tive remedies, seek—

1           “(A) judicial review or other appropriate  
 2 relief against the Secretary in a United States  
 3 district court, which may include an order  
 4 quieting beneficial title in the name of peti-  
 5 tioner whose property was sold by the Secretary  
 6 in violation of this section; and

7           “(B) recover reasonable attorneys fees if  
 8 he is the prevailing party.

9           “(h) VOLUNTARY ABANDONMENT.—Any person who  
 10 is an owner of an interest subject to this section may, with  
 11 the Secretary’s approval, voluntarily abandon that interest  
 12 to the benefit of the tribe with jurisdiction over the parcel  
 13 of land or a co-owner of a trust or restricted interest in  
 14 the same parcel of land in accordance with regulations  
 15 adopted pursuant to subsection (j).

16           “(i) TRANSFER OF ABANDONED INTERESTS IN  
 17 LAND.—

18           “(1) Any interest in land acquired under sub-  
 19 section (e) or (h) over which an Indian tribe has ju-  
 20 risdiction shall be held in trust by the Secretary for  
 21 the benefit of that tribe, provided that the tribe may  
 22 decline any such property in its discretion, and pro-  
 23 vided that if the tribe declines or does not currently  
 24 own any interest within that parcel a co-owner with



1 a majority interest shall have the first right of pur-  
2 chase of the property at the appraised price.

3 “(2) Any interest in real property acquired  
4 under subsection (e) or (h) that is not subject to the  
5 jurisdiction of an Indian tribe shall be held in trust  
6 by the Secretary for all of the other co-owners of un-  
7 divided trust or restricted interests in the parcel in  
8 proportion to their respective interests in the prop-  
9 erty, provided that any owner may decline to accept  
10 such interest, in which case that interest shall be al-  
11 located proportionately among such other co-owners  
12 who do not decline.

13 “(3) The Indian tribe or other subsequent  
14 owner described in paragraph (2) takes such interest  
15 free of all claims by the owner who abandoned the  
16 interest and of all persons claiming through or  
17 under such owner.

18 “(j) REGULATIONS.—The Secretary is authorized to  
19 adopt such regulations as may be necessary to implement  
20 the provisions of this section.”.

21 **SEC. 8. MISSING HEIRS.**

22 Section 207 of the Indian Land Consolidation Act  
23 (25 U.S.C. 2206) is amended by adding the following:

24 “(m) NOTICE.—Prior to holding a hearing to deter-  
25 mine the heirs to trust or restricted property, or making

1 a decision determining such heirs, the Secretary shall seek  
 2 to provide actual written notice of the proceedings to all  
 3 heirs, including notice of the provisions of this subsection  
 4 and of section 207(n) of this Act. Such efforts shall in-  
 5 clude—

6 “(1) a search of publicly available records and  
 7 Federal records, including telephone and address di-  
 8 rectories and including electronic search methods;

9 “(2) an inquiry with family members and co-  
 10 heirs of the property;

11 “(3) an inquiry with the tribal government of  
 12 which the owner is a member, and the tribal govern-  
 13 ment with jurisdiction over the property, if any; and

14 “(4) if the property is of a value greater than  
 15 \$1,000, an independent firm shall be contracted to  
 16 conduct a missing persons search.

17 “(n) MISSING HEIRS.—

18 “(1) For purposes of this subsection and sub-  
 19 section (m), an heir will be presumed missing if his  
 20 whereabouts remain unknown 60 days after comple-  
 21 tion of notice efforts under subsection (m) and they  
 22 have had no contact with other heirs or the Depart-  
 23 ment for 6 years prior to a hearing or decision to  
 24 ascertain heirs.

1           “(2) Before the date for declaring an heir miss-  
 2           ing, any person may request an extension of time to  
 3           locate an heir. An extension may be granted for  
 4           good cause.

5           “(3) An heir shall be declared missing only  
 6           after a review of the efforts made and a finding that  
 7           this section has been complied with.

8           “(4) A missing heir shall be presumed to have  
 9           predeceased the decedent for purposes of descent  
 10          and devise.”.

11 **SEC. 9. ANNUAL NOTICE AND FILING REQUIREMENT FOR**  
 12 **OWNERS OF INTERESTS IN TRUST OR RE-**  
 13 **STRICTED LANDS.**

14          The Indian Land Consolidation Act (25 U.S.C. 2201  
 15 et seq.) (as amended by section 7) is amended by adding  
 16 at the end the following:

17 **“SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHERE-**  
 18 **ABOUTS OF INTEREST OWNERS.**

19          “(a) IN GENERAL.—On an annual basis, the Sec-  
 20 retary shall send a notice, response form, and a change  
 21 of name and address form to each owner of an interest  
 22 in trust or restricted land. The notice shall inform owners  
 23 of their interest and obligation to provide the Secretary  
 24 with a notice of any change in their name or address im-  
 25 mediately upon such change. The response form should

1 include a section in which the owner may confirm or up-  
 2 date his name and address. The change of name and ad-  
 3 dress form may be used by the owner at any time when  
 4 his name or address changes subsequent to his annual fil-  
 5 ing of the response form.

6 “(b) OWNER RESPONSE.—The owner of an interest  
 7 in trust or restricted land shall file the response form upon  
 8 receipt to confirm or update his name and address on an  
 9 annual basis.

10 “(c) NO RESPONSE; INITIATION OF SEARCH.—In the  
 11 event that an owner does not file the response form or  
 12 provide the Secretary with a confirmation or update of his  
 13 name and address through other means, the Secretary  
 14 shall initiate a search in order to ascertain the where-  
 15 abouts and status of the owner.”.

16 **SEC. 10. EFFECTIVE DATE.**

17 The amendments made by this Act shall not apply  
 18 to the estate of an individual who dies before the later  
 19 of—

20 (1) the date that is 1 year after the date of en-  
 21 actment of this Act; or

22 (2) the date specified in section 207(g)(5) of  
 23 the Indian Land Consolidation Act (25 U.S.C.  
 24 2206(g)(5)).

